

9.0 SUBMISSION FORMS AND CERTIFICATIONS

Section 9.0 contains:

Appendix A: Proposal Cover Sheet

Appendix A must be included with each proposal submitted.

Appendix B: Project Summary Form

Appendix B must be included with each proposal submitted. Don't include proprietary or classified information in the project summary form.

Appendix C: Cost Proposal Outline

A cost proposal following the format in Appendix C must be included with each proposal submitted.

Appendix D: Fast Track Application Form

A DoD pilot program under which projects that attract outside investors receive interim funding and selection for Phase II award provided they are “technically sufficient” and have substantially met Phase I goals.

Appendix E: Company Commercialization Report

A report that identifies each Phase II SBIR and/or STTR project your firm has received. All Phase I and Phase

II proposa

Reference A: Model Agreement for the Allocation of Intellectual Property and Follow-on Rights

This is only a model provided as a guideline for the small business in the development of an agreement that allocates intellectual property rights and rights to follow-on research, development, or commercialization between the small business and the research institution (see Section 3.4.o for more details). The small business is not required to use this model agreement, in whole or part, for its agreement with the research institution. A written agreement between the small business and research institution need not be submitted with the proposal, but must be available upon request.

Reference B: Proposal Receipt Notification Form

Reference C: Directory of Small Business Specialists

Reference D: SF 298 Report Documentation Page

Reference E: DoD Fast Track Guidance

Reference F: List of Eligible FFRDCs

Reference G: DoD SBIR/STTR Mailing List Form

TOPIC NUMBER:	PROPOSAL TITLE:	
PRINCIPAL INVESTIGATOR:		PI TELEPHONE:
PROPOSED COST:	PHASE I OR II:	PROPOSED DURATION IN MONTHS:

CERTIFICATION:	YES	NO
Is the FIRM a small business as described in section 2.3?	~	~
Is the INSTITUTION a research institution as defined in section 2.4?	~	~
Is the FIRM a socially and economically disadvantaged business as defined in section 2.5? <small>(Collected for statistical purposes only)</small>	~	~
Is the FIRM a woman-owned small business as described in section 2.6? <small>(Collected for statistical purposes only)</small>	~	~
Number of employees in the FIRM including all affiliates:	_____	
Has this proposal has been submitted to other government agencies or DoD components?	~	~

SIGNATURE OF PRINCIPAL INVESTIGATOR	DATE	SIGNATURE OF CORPORATE OFFICIAL	DATE	SIGNATURE OF INSTITUTION OFFICIAL	DATE
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INSTRUCTIONS FOR COMPLETING APPENDIX A

AND APPENDIX B

General:

DOD Components employ automated optical devices to record STTR proposal information. Therefore the proposal cover sheet (Appendix A) and the project summary (Appendix B) should be TYPED without proportional spacing using one of the following type styles:

Courier 12,10 or 12 pitch
Courier 71 10 pitch
Elite 71
Letter Gothic 10 or 12 pitch
OCR-B 10 or 12 pitch
Pica 72 10 pitch
Prestige Elite 10 or 12 pitch
Prestige Pica 10 Pitch

Whenever a numerical value is requested type the numerical character (i.e. in "Proposed Duration" type 6 NOT six).

When typing address information use the two alphabet characters used by the Post Office for the state, DO NOT SPELL OUT THE FULL STATE NAME (i.e. type NY not New York or N.Y.).

The original proposal (with forms) plus (4) complete copies must be submitted (see Section 6).

Carefully align the forms in the typewriter using the underlines as a guide. The forms are printed to accommodate standard typewriter spacing.

Request for Copies:

Additional forms may be downloaded from our Home Page (<http://www.acq.osd.mil/sadbu/sbir>). They may also be obtained from your State SBIR/STTR Organization (Reference D) or:

DoD SBIR/STTR Support Services
2850 Metro Drive
Suite 600
Minneapolis, MN 55425-1566
(800) 382-4634

U.S. DEPARTMENT OF DEFENSE
SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM
PROPOSAL COVER SHEET

Failure to fill in all appropriate spaces may cause your proposal to be disqualified

TOPIC NUMBER:	PROPOSAL TITLE:	
PHASE I OR II PROPOSAL:	FIRM NAME:	PRINCIPAL INVESTIGATOR:
TECHNICAL ABSTRACT (Limit your abstract to 200 words with no classified or proprietary information/data)		
ANTICIPATED BENEFITS/POTENTIAL COMMERCIAL APPLICATIONS OF THE RESEARCH OR DEVELOPMENT		
KEYWORDS (List a maximum of 8 Keywords that describe the project)		

INSTRUCTIONS FOR COMPLETING APPENDIX A
AND APPENDIX B

General:

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Courier 71 10 pitch
Elite 71
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OCR-B 10 or 12 pitch
Pica 72 10 pitch
Prestige Elite 10 or 12 pitch
Prestige Pica 10 Pitch

Whenever a numerical value is requested type the numerical character (i.e. in "Proposed Duration" type 6 NOT six).

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The original proposal (with forms) plus (4) complete copies must be submitted (see Section 6).

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U.S. DEPARTMENT OF DEFENSE
SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM
COST PROPOSAL

Background:

The following items, as appropriate, should be included in proposals responsive to the DoD Solicitation Brochure.

Cost Breakdown Items (in this order, as appropriate):

1. Name of offeror
2. Home office address
3. Location where work will be performed
4. Title of proposed effort
5. Topic number and topic title from DoD Solicitation Brochure
6. Total dollar amount of the proposal
7. Direct material costs
 - a. Purchased parts (dollars)
 - b. Subcontracted items (dollars)
 - c. Other
 - (1) Raw material (dollars)
 - (2) Your standard commercial items (dollars)
 - (3) Interdivisional transfers (at other than cost dollars)
 - d. Total direct material (dollars)
8. Material overhead (rate _____ %) x total direct material = dollars
9. Direct labor (specify)
 - a. Type of labor, estimated hours, rate per hour and dollar cost for each type
 - b. Total estimated direct labor (dollars)
10. Labor overhead
 - a. Identify overhead rate, the hour base and dollar cost
 - b. Total estimated labor overhead (dollars)
11. Special testing (include field work at government installations)
 - a. Provide dollar cost for each item of special testing
 - b. Estimated total special testing (dollars)
12. Special equipment
 - a. If direct charge, specify each item and cost of each
 - b. Estimated total special equipment (dollars)
13. Travel (if direct charge)
 - a. Transportation (detailed breakdown and dollars)
 - b. Per diem or subsistence (details and dollars)
 - c. Estimated total travel (dollars)
14. Subcontracts (eg., consultants)
 - a. Identify each, with purpose, and dollar rates
 - b. Total estimated consultants costs (dollars)
15. Other direct costs (specify)
 - a. Total estimated direct cost and overhead (dollars)
16. General and administrative expense
 - a. Percentage rate applied
 - b. Total estimated cost of G&A expense (dollars)
17. Royalties (specify)
 - a. Estimated cost (dollars)
18. Fee or profit (dollars)
19. Total estimate cost and fee or profit (dollars)
20. The cost breakdown portion of a proposal must be signed by a responsible official, and the person signing must have typed name and title and date of signature must be indicated.
21. On the following items offeror must provide a yes or no answer to each question.
 - a. Has any executive agency of the United State Government performed any review of your accounts or records in connection with any other government prime contract or subcontract within the past twelve months? If yes, provide the name and address of the reviewing office, name of the individual and telephone extension.
 - b. Will you require the use of any government property in the performance of this proposal? If yes, identify.
 - c. Do you require government contract financing to perform this proposed contract? If yes, then specify type as advanced payments or progress payments.
22. Type of contract proposed, either cost-plus-fixed-fee or firm-fixed price.

U.S. DEPARTMENT OF DEFENSE
SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM
FAST TRACK APPLICATION FORM

Failure to fill in all appropriate spaces may cause your proposal to be disqualified

FAST TRACK PROGRAM QUALIFICATIONS (see Section 4.5 of the solicitation for detailed explanation)

To qualify for the STTR Fast Track, a company must submit a Fast Track application and meet the other requirements detailed in Section 4.5 of the solicitation. This form, when completed and signed by both the company and its investor, should be included as the cover sheet of the Fast Track application. Instructions on where to submit the application are on the back of this form.

TOPIC #:	CONTRACT #:	PHASE I EFFECTIVE START DATE:	PHASE I COMPLETION DATE:
PHASE I TITLE:			
FIRM:		TAXPAYER ID#:	
STREET:			
CITY:	STATE:	ZIP:	
OUTSIDE INVESTOR:		TAXPAYER ID#:	
STREET:			
CITY:	STATE:	ZIP:	

BUSINESS CERTIFICATION:

- ☐ Has your company ever received a Phase II SBIR or STTR award from the federal government (including DoD)?
 If yes, the minimum matching rate is \$1 for every STTR dollar.
 If no, the minimum matching rate is 25 cents for every STTR dollar.
- ☐ Does the outside funding proposed in this application qualify as a "Fast Track investment", and does the investor qualify as an "outside investor", as defined in DoD Fast Track Guidance (Reference E)? If you have any questions about this, call the DoD SBIR/STTR Help Desk (800-382-4634). The Help Desk will refer any policy and/or substantive questions to appropriate DoD personnel for an official response.

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Caution: knowingly and willfully making any false, fictitious, or fraudulent statements or representations above may be felony under the Federal Criminal False Statement Act (18 U.S.C. Sec 1001), punishable by a fine of up to \$10,000, up to five years in prison, or both.

PROPOSED STTR AND MATCHING FUNDS:

- ☐ Proposed DoD STTR funds for the interim effort: \$ _____
- ☐ Proposed DoD STTR funds for Phase II: \$ _____
- ☐ Total proposed DoD STTR funds (interim + Phase II): \$ _____
- ☐ Amount of matching funds (cash) the investor will provide: \$ _____

By signing below, the parties are stating that the outside investor will provide matching funds, in the amount listed above, contingent on the company's selection for Phase II STTR award. If the matching funds are not transferred from the investor to the company within 45 days after DoD has notified the company that it has been selected for Phase II award, the company will be ineligible to compete for a Phase II award not only under the Fast track but also under the regular Phase II competition, unless a specific written exception is granted by the Component STTR program manager.

FIRM OFFICIAL		OUTSIDE INVESTOR OFFICIAL	
NAME:		NAME:	
TITLE:		TITLE:	
TELEPHONE:		TELEPHONE:	
SIGNATURE:	DATE:	SIGNATURE:	DATE:

INSTRUCTIONS FOR COMPLETING APPENDIX D

SUBMISSION:

Submit the Fast Track application, including the three items discussed in Section 4.5(b), to the technical monitor for your Phase I project. In addition, submit a copy of the entire application to the Program Manager of the DoD Component funding the STTR project (addresses below). Finally, send a copy of this application cover sheet, when completed, to the DoD SBIR/STTR Program Manager, 3061 Defense Pentagon, Room 2A338, Washington, DC 20301-3061. Do not submit other items in the Fast Track application to the DoD STTR Program Manager.

Department of the Army

Director, Army Research Office
ATTN: AMXRO-RT (Ltc. Ken Jones)
4300 S. Miami Boulevard
Research Triangle Park, NC 27709

Ballistic Missile Defense Organization

ATTN: TOI/STTR (Bond)
1725 Jefferson Davis Highway
Suite 809
Arlington, VA 22202

Department of the Navy

ONR 362 STTR
800 N. Quincy Street
Arlington, VA 22217-5660

Defense Advanced Research Projects Agency

ATTN: STTR Program Manager (Ms. C. Jacobs)
3701 N. Fairfax Drive
Arlington, VA 22203-1714

Department of the Air Force

AFPL/XPPX, Suite 6
ATTN: R.J. Dickman
Wright Patterson AFB, OH 45433-5006

REQUEST FOR COPIES OF THIS FORM:

Additional forms may be downloaded from our Home Page (<http://www.acq.osd.mil/sadbu/sbir>). They may also be obtained from your State SBIR/STTR Organization (Reference D) or:

DoD SBIR/STTR Support Services
2850 Metro Drive, Suite 600
Minneapolis, MN 55425-1566
(800) 382-4634

Failure to fill in all appropriate spaces may cause your proposal to be disqualified

NAME: _____

ADDRESS:

CITY: STATE: ZIP:

< If your firm has received 5 or more Phase II SBIR and/or STTR awards from the Federal Government and the first award was received prior to Jan. 1, 1991, what percentage of your firm's revenues during your last fiscal year is Federal SBIR and/or STTR funding (Phase I and/or II)?

< Identify each Phase II SBIR and/or STTR project your firm has received and, for each project, provide the total revenue to date from resulting sales of new products or non-R&D services to DoD or its prime contractors, other government agencies, and private sector customers. Also provide total non-SBIR, non-STTR funding received from government and private sector sources to further develop the SBIR or STTR technology (including R&D, manufacturing, marketing, etc.). Apportion sales revenue and non-SBIR, non-STTR funding among the various Phase II projects without double-counting. (See back for further instruction.)

[illegible]

Agency:_____ Topic Number:_____ Contract _____

Number:

Project

Title: _____

DoD/Primes Sales: _____ Other Gov't Sales: _____ Private _____ Sector _____

Sales:

non-SBIR/STTR Gov't Funds: _____ non-SBIR/STTR Private Sector Funds: _____

[illegible]

Agency: _____ Topic Number: _____ Contract _____

Number:

Project

Title: _____

DoD/Primes Sales:	Other Gov't Sales:	Private	Sector

Sales: _____

non-SBIR/STTR Gov't Funds: _____ non-SBIR/STTR Private Sector Funds: _____

[illegible]

Agency: _____ Topic Number: _____ Contract _____

Number: _____

Project

Title: _____

DoD/Primes Sales:	Other Gov't Sales:	Private	Sector

Sales:

non-SBIR/STTR Gov't Funds: non-SBIR/STTR Private Sector Funds:

[illegible]

Agency: Topic Number: Contract

Number:

Title: _____

Sales: _____

[illegible]

Number: _____

Title: _____

Sales: _____

[illegible]

TELEPHONE: _____

FAX: _____

DATE _____

INSTRUCTIONS FOR COMPLETING APPENDIX E

General:

The Company Commercialization Report (Appendix E) shall NOT be counted toward proposal page count limitations.

Appendix E should be the last page(s) of your proposal.

Use as many Appendix E forms as needed to report ALL Phase II projects. (Make black and white copies of this form, if necessary.) If multiple pages are submitted, fill in the "Page___of___" in the lower right corner.

Type in either a 10 or 12 characters per inch font.

Carefully align the forms in the typewriter using the underlines as a guide.

Use the Post Office two-letter abbreviation for the state (i.e. type NY not New York).

Definitions:

- Sales - sales of products or non-R&D services resulting from the technology associated with this Phase II project. Sales also includes the sale of technology or rights. Specify the sales revenue in dollars (1) to the DoD and/or DoD prime contractors, (2) to other government agencies (federal, state, local and/or foreign), and (3) to the private sector. Include sales made by your firm as well as by other firms that may have acquired the SBIR or STTR developed technology. (e.g., spin-off companies, licensees, etc.)
- non-SBIR/STTR funding - non-SBIR/non-STTR government or private sector funds to further develop the technology (including R&D, manufacturing, marketing, etc.) associated with this Phase II project.
- Apportion sales/funding - If two or more Phase II projects contributed to a single products or technology right that has been sold or received non-SBIR, non-STTR funding, divide proportionately the sales or funding among the contributing projects. For example, Phase II projects A and B lead to the sale of a new product "Widget" to the Army for a total of \$10 million and to retail software stores for \$12 million. Under the heading "DoD/Primes Sales:" put \$5 million and under the heading "Private Sector Sales:" put \$6 million for both Phase II projects A and B.
- non-R&D Services - any services that do not include additional R&D work on the SBIR/STTR technology – for example, engineering services, study and analysis, information services.

Submission:

ALL Phase I and Phase II proposals must include a Company Commercialization Report (Appendix E). Please do not submit supplemental material.

Request for Copies:

Additional forms may be downloaded from our Home Page (<http://www.acq.osd.mil/sadbu/sbir>). They may also be obtained from your State SBIR/STTR Organization (Reference D) or:

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SMALL BUSINESS TECHNOLOGY TRANSFER (STTR) PROGRAM

ALLOCATION OF RIGHTS IN INTELLECTUAL PROPERTY AND RIGHTS TO CARRY OUT FOLLOW-ON RESEARCH, DEVELOPMENT, OR COMMERCIALIZATION

(This is only a model)

This Agreement between _____, a small business concern organized as a _____ under the laws of _____ and having a principal place of business at _____, ("SBC") and _____, a research institution having a principal place of business at _____, ("RI") is entered into for the purpose of allocating between the parties certain rights relating to an STTR project to be carried out by SBC and RI (hereinafter referred to as the "PARTIES") under an STTR funding agreement that may be awarded by _____ ("AGENCY") to SBC to fund a proposal entitled "_____" submitted, or to be submitted, to AGENCY by SBC on or about _____, 199__.

1. Applicability of this Agreement.

- (a) This Agreement shall be applicable only to matters relating to the STTR project referred to in the preamble above.
- (b) If a funding agreement for an STTR project is awarded to SBC based upon the STTR proposal referred to in the preamble above, SBC will promptly provide a copy of such funding agreement to RI, and SBC will make a subaward to RI in accordance with the funding agreement, the proposal, and this Agreement. If the terms of such funding agreement appear to be inconsistent with the provisions of this Agreement, the PARTIES will attempt in good faith to resolve any such inconsistencies. However, if such resolution is not achieved within a reasonable period, SBC shall not be obligated to award nor RI to accept the subaward. If a subaward is made by SBC and accepted by RI, this Agreement shall not be applicable to contradict the terms of such subaward or of the funding agreement awarded by AGENCY to SBC except on the grounds of fraud, misrepresentation, or mistake, but shall be considered to resolve ambiguities in the terms of the subaward.
- (c) The provisions of this Agreement shall apply to any and all consultants, subcontractors, independent contractors, or other individuals employed by SBC or RI for the purposes of this STTR project.

2. Background Intellectual Property.

- (a) "Background Intellectual Property" means property and the legal right therein of either or both parties developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software.
- (b) This Agreement shall not be construed as implying that either party hereto shall have the right to use Background Intellectual Property of the other in connection with this STTR project except as otherwise provided hereunder.

- (1) The following Background Intellectual Property of SBC may be used nonexclusively and, except as noted, without compensation by RI in connection with research or development activities for this STTR project (if "none" so state): _____;
- (2) The following Background Intellectual Property of RI may be used nonexclusively and, except as noted, without compensation by SBC in connection with research or development activities for this STTR project (if "none" so state): _____;
- (3) The following Background Intellectual Property of RI may be used by SBC nonexclusively in connection with commercialization of the results of this STTR project, to the extent that such use is reasonably necessary for practical, efficient and competitive commercialization of such results but not for commercialization independent of the commercialization of such results, subject to any rights of the Government therein and upon the condition that SBC pay to RI, in addition to any other royalty including any royalty specified in the following list, a royalty of ____% of net sales or leases made by or under the authority of SBC of any product or service that embodies, or the manufacture or normal use of which entails the use of, all or any part of such Background Intellectual Property (if "none" so state): _____.

3. Project Intellectual Property.

(a) "Project Intellectual Property" means the legal rights relating to inventions (including Subject Inventions as defined in 37 CFR § 401), patent applications, patents, copyrights, trademarks, mask works, trade secrets and any other legally protectable information, including computer software, first made or generated during the performance of this STTR Agreement.

(b) Except as otherwise provided herein, ownership of Project Intellectual Property shall vest in the party whose personnel conceived the subject matter or first actually reduced the subject matter to practice, and such party may perfect legal protection therein in its own name and at its own expense. Jointly made or generated Project Intellectual Property shall be jointly owned by the PARTIES unless otherwise agreed in writing. The SBC shall have the first option to perfect the rights in jointly made or generated Project Intellectual Property unless otherwise agreed in writing.

(1) The ownership, including rights to any revenues and profits, resulting from any product, process, or other innovation or invention based on the cooperative shall be allocated between the SBC and the RI as follows:

SBC Percent: ____ RI Percent: ____

(2) Expenses and other liabilities associated with the development and marketing of any product, process, or other innovation or invention shall be allocated as follows:

SBC Percent: ____ RI Percent: ____

(c) The PARTIES agree to disclose to each other, in writing, each and every Subject Invention, which may be patentable or otherwise protectable under the United States patent laws in Title 35, United States Code. The PARTIES acknowledge that they will disclose Subject Inventions to each other and the awarding agency within ____ months after their respective inventor(s) first disclose the invention in writing to the person(s) responsible for patent matters of the disclosing Party. All written disclosures of such inventions shall contain sufficient detail of the invention, identification of any statutory bars, and shall be marked confidential, in accordance with 35 U.S.C. § 205.

(d) Each party hereto may use Project Intellectual Property of the other nonexclusively and without compensation in connection with research or development activities for this STTR project, including inclusion in STTR project reports to the AGENCY and proposals to the AGENCY for continued funding of this STTR project through additional phases.

(e) In addition to the Government's rights under the Patent Rights clause of 37 CFR § 401.14, the PARTIES agree that the Government shall have an irrevocable, royalty free, nonexclusive license for any governmental purpose in any Project Intellectual Property.

(f) SBC will have an option to commercialize the Project Intellectual Property of RI, subject to any rights of the Government therein, as follows--

(1) Where Project Intellectual Property of RI is a potentially patentable invention, SBC will have an exclusive option for a license to such invention, for an initial option period of ____ months after such invention has been reported to SBC. SBC may, at its election and subject to the patent expense reimbursement provisions of this section, extend such option for an additional ____ months by giving written notice of such election to RI prior to the expiration of the initial option period. During the period of such option following notice by SBC of election to extend, RI will pursue and maintain any patent protection for the invention requested in writing by SBC and, except with the written consent of SBC or upon the failure of SBC to reimburse patenting expenses as required under this section, will not voluntarily discontinue the pursuit and maintenance of any United States patent protection for the invention initiated by RI or of any patent protection requested by SBC. For any invention for which SBC gives notice of its election to extend the option, SBC will, within ____ days after invoice, reimburse RI for the expenses incurred by RI prior to expiration or termination of the option period in pursuing and maintaining (i) any United States patent protection initiated by RI and (ii) any patent protection requested by SBC. SBC may terminate such option at will by giving written notice to RI, in which case further accrual of reimbursable patenting expenses hereunder, other than prior commitments not practically revocable, will cease upon RI's receipt of such notice. At any time prior to the expiration or termination of an option, SBC may exercise such option by giving written notice to RI, whereupon the parties will promptly and in good faith enter into negotiations for a license under RI's patent rights in the invention for SBC to make, use and/or sell products and/or services that embody, or the development, manufacture and/or use of which involves employment of, the invention. The terms of such license will include: (i) payment of reasonable royalties to RI on sales of products or services which embody, or the development, manufacture or use of which involves employment of, the invention; (ii) reimbursement by SBC of expenses incurred by RI in seeking and maintaining patent protection for the invention in countries covered by the license (which reimbursement, as well as any such patent expenses incurred directly by SBC with RI's authorization, insofar as deriving from RI's interest in such

invention, may be offset in full against up to ____ of accrued royalties in excess of any minimum royalties due RI); and, in the case of an exclusive license, (iii) reasonable commercialization milestones and/or minimum royalties.

(2) Where Project Intellectual Property of RI is other than a potentially patentable invention, SBC will have an exclusive option for a license, for an option period extending until ____ months following completion of RI's performance of that phase of this STTR project in which such Project Intellectual Property of RI was developed by RI. SBC may exercise such option by giving written notice to RI, whereupon the parties will promptly and in good faith enter into negotiations for a license under RI's interest in the subject matter for SBC to make, use and/or sell products or services which embody, or the development, manufacture and/or use of which involve employment of, such Project Intellectual Property of RI. The terms of such license will include: (i) payment of reasonable royalties to RI on sales of products or services that embody, or the development, manufacture or use of which involves employment of, the Project Intellectual Property of RI and, in the case of an exclusive license, (ii) reasonable commercialization milestones and/or minimum royalties.

(3) Where more than one royalty might otherwise be due in respect of any unit of product or service under a license pursuant to this Agreement, the parties shall in good faith negotiate to ameliorate any effect thereof that would threaten the commercial viability of the affected products or services by providing in such license(s) for a reasonable discount or cap on total royalties due in respect of any such unit.

4. Follow-on Research or Development.

All follow-on work, including any licenses, contracts, subcontracts, sublicenses or arrangements of any type, shall contain appropriate provisions to implement the Project Intellectual Property rights provisions of this agreement and insure that the PARTIES and the Government obtain and retain such rights granted herein in all future resulting research, development, or commercialization work.

5. Confidentiality/Publication.

(a) Background Intellectual Property and Project Intellectual Property of a party, as well as other proprietary or confidential information of a party, disclosed by that party to the other in connection with this STTR project shall be received and held in confidence by the receiving party and, except with the consent of the disclosing party or as permitted under this Agreement, neither used by the receiving party nor disclosed by the receiving party to others, provided that the receiving party has notice that such information is regarded by the disclosing party as proprietary or confidential. However, these confidentiality obligations shall not apply to use or disclosure by the receiving party after such information is or becomes known to the public without breach of this provision or is or becomes known to the receiving party from a source reasonably believed to be independent of the disclosing party or is developed by or for the receiving party independently of its disclosure by the disclosing party.

(b) Subject to the terms of paragraph (a) above, either party may publish its results from this STTR project. However, the publishing party will give a right of refusal to the other party with respect to a proposed publication, as well as a ____ day period in which to review proposed publications and submit comments, which will be given full consideration before publication. Furthermore, upon request of the reviewing party, publication will be deferred for up to ____ additional days for preparation and filing of a patent application which the reviewing party has the right to file or to have filed at its request by the publishing party.

6. Liability.

(a) Each party disclaims all warranties running to the other or through the other to third parties, whether express or implied, including without limitation warranties of merchantability, fitness for a particular purpose, and freedom from infringement, as to any information, result, design, prototype, product or process deriving directly or indirectly and in whole or part from such party in connection with this STTR project.

(b) SBC will indemnify and hold harmless RI with regard to any claims arising in connection with commercialization of the results of this STTR project by or under the authority of SBC. The PARTIES will indemnify and hold harmless the Government with regard to any claims arising in connection with commercialization of the results of this STTR project.

7. Termination.

(a) This agreement may be terminated by either Party upon ____ days written notice to the other Party. This agreement may also be terminated by either Party in the event of the failure of the other Party to comply with the terms of this agreement.

(b) In the event of termination by either Party, each Party shall be responsible for its share of the costs incurred through the

effective date of termination, as well as its share of the costs incurred after the effective date of termination, and which are related to the termination. The confidentiality, use, and/or non-disclosure obligations of this agreement shall survive any termination of this agreement.

AGREED TO AND ACCEPTED--

Small Business Concern

By:_____ Date:_____

Print name:_____

Title:_____

Research Institution

By:_____ Date:_____

Print name:_____

Title:_____

RECEIPT NOTIFICATION

Proposer: If you wish to be notified that your proposal has been received, please submit this form with a stamped, self-addressed envelope.



Remember to Stamp Your Self-Addressed Envelope!

TO: _____
(Fill in firm name)

(street)

(city, state ZIP)

SUBJECT: STTR Solicitation No. _____

STTR Topic No. _____
(fill in Solicitation and Topic No.)

This is to notify you that your proposal in response to the subject solicitation and topic number has been received by

(Fill in name of organization to which you will send your proposal)

Signature by receiving organization

Date

DIRECTORY OF SMALL BUSINESS SPECIALISTS

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DoD Fast Track Guidance

This paper contains DoD's official guidance on what types of relationships between a small company and outside investors in the company qualify as an investment under the SBIR and STTR Fast Track ("Fast Track investment"). It includes specific examples of company-investor relationships that we have been asked about and our official responses on whether these relationships qualify as a Fast Track investment. If you have questions about whether a particular company-investor relationship qualifies, please contact the DoD SBIR/STTR Help Desk (tel. 800/382-4634, fax 800/462-4128, e-mail SBIRHELP@us.teltech.com). The Help Desk will refer any policy or substantive questions to appropriate DoD personnel for an official response.

I. General Guidance on What Qualifies As A "Fast Track Investment"

A. The investor must be an **outside** investor, which may include such entities as another company, a venture capital firm, an individual "angel" investor, a non-SBIR/non-STTR government program, or any combination of the above. It does not include the owners of the small business, their family members, and/or "affiliates" of the small business, as defined in Title 13 of the *Code of Federal Regulations* (C.F.R.), Section 121.103. As discussed in that Section:

B. Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

C. [We] consider factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.

1. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, may be treated as one party with such interests aggregated.

D. The **investment** must be an arrangement in which the outside party provides cash to the small company in return for such items as: equity; a share of royalties; rights in the technology; a percentage of profit; an advance purchase order for products resulting from the technology; or any combination of the above.

II. Specific examples of What Does and Does Not Qualify As a "Fast Track Investment"

A. Examples of What Qualifies as an "Outside" Investor

(1) Can a small company contribute its own internal funds to qualify for the Fast Track?

No. DoD is seeking outside validation of the commercial potential of the company's technology, and therefore requires that the funds come from an outside investor. Also, cash from an outside investor shows up plainly on the company's books and therefore can be more readily verified than a company's own matching contribution.

(2) Company A spins off company B, which wins a phase I SBIR award. Company A then wants to contribute matching funds to qualify company B for the Fast Track. Can A be considered an outside investor for purposes of the Fast Track?

In making our determination of whether company A is an outside investor, we would be guided by the definition of "affiliates" in 13 C.F.R. Sec. 121.103, discussed above. Our presumption is that in this example A and B would be considered "affiliates," and that A would therefore not be an outside investor for purposes of the Fast Track. However, that presumption could be rebutted by showing, for example, that the spin-off occurred several years ago and that A and B do not exercise control over one another, do not have common ownership or management, have different business interests, etc.

(3) Small company S wins a phase I SBIR award. The president of S is a major shareholder in another company Y, which wants to contribute matching funds to qualify S for the Fast Track. Can Y be considered an outside investor?

Our presumption is that Y would not be considered an outside investor. Our determination would be guided by whether the president's stake in Y is large enough that S and Y would be considered "affiliates" under 13 C.F.R. Sec. 121.103. Subsection c of Section 121.103 specifically discusses affiliation based on stock ownership:

- c. Affiliation based on stock ownership.
 1. A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock.
 2. If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

If S and Y are found to be affiliates, we would determine that Y is not an outside investor.

(4) Does the outside investor have to be a single entity (e.g., a single venture capital firm) or can it be more than one entity (e.g., two angel investors and a venture capital firm)?

It can be more than one entity.

(5) Small company A contributes matching funds to small company B in order to qualify B for the Fast Track, and, at the same time, B contributes matching funds to A in order to qualify A for the Fast Track. Do A and B qualify as outside investors under the Fast Track?

No. A and B's relationship is such that their investment in each other would not provide outside validation of the commercial potential of their respective SBIR projects. We would therefore not consider them to be outside investors for purposes of the Fast Track.

(6) Can the brother of an employee of small company S contribute funds to qualify S for the Fast Track?

Probably not. Again, we would be guided by the definition of "affiliates" in 13 C.F.R. Sec. 121.103. The brother presumptively would be an affiliate of company S and not an outside investor.

(7) Venture capital firm V currently is a 22 percent shareholder in small company S. Can V invest additional funds in S to qualify S for the Fast Track?

Our presumption is yes. In making our determination, we would be guided by whether V and S are "affiliates," as defined in 13 C.F.R. Sec. 121.103. Section 121.103 provides (in subsection (b)(5)) that a venture capital firm is not affiliated with a company if the venture capital firm does not control the company -- e.g., by owning more than 50 percent of the stock of a small company (prior to its investment under the Fast Track), as described in 13 C.F.R. 107.865. 13 C.F.R. 107.865 can be viewed on the internet at <http://www.acq.osd.mil/sadbu/sbir/affil2.htm>.

(8) Large company L makes a cash investment in small company S, and then serves as a subcontractor to S on an SBIR project. Can L's investment in S count as a matching contribution for purposes of the Fast Track?

Only L's cash investment net of its subcontracting effort can count as matching funds for purposes of the Fast Track. For example, if L invests \$750,000 in S and subcontracts with S for \$250,000, only L's net contribution (\$500,000) can count as matching funds for purposes of the Fast Track.

(9) Company Y makes a cash investment in small company S for purposes of the Fast Track, and also enters into a separate contract with S under which Y provides certain goods/services to S in return for \$500,000. Can Y's cash investment in S count as a matching contribution for purposes of the Fast Track?

As in the previous example, only Y's cash investment net of the \$500,000 it receives from S can count as matching funds for purposes of the Fast Track. However, if the separate contract between Y and S pre-dates S's submission of its phase I SBIR proposal, Y's entire cash investment can count as matching funds for purposes of the Fast Track.

(10) A group of investors wishes to invest funds in small company S to qualify S for the Fast Track. One of the investors is the mother of S's president, who wants to contribute \$50,000 toward the effort. Can the group's investment in S count as a matching contribution to qualify S for the Fast Track?

The mother's investment of \$50,000 does not count, because she is not an outside investor (see item (6) above). Contributions of the other investors can count provided that they meet the other conditions for the Fast Track (e.g., each must be an outside investor).

B. Examples of What Qualifies as an "Investment"

(1) Can a loan from an outside party qualify as an "investment" for purposes of the Fast Track?

No. The rationale behind the Fast Track is that an outside party is betting on the company's success in bringing the technology to market -- not just its ability to repay a loan.

(2) How about a loan that is convertible to equity?

A loan that is convertible to equity at the company's discretion would count as an investment under the following circumstances: (1) the loan is provided by a public entity (e.g., a state agency), or (2) the loan is provided by a private entity, and the SBIR company actually converts the loan to equity before the end of phase I.

(3) Can in-kind contributions from an outside investor count as matching funds under the Fast Track?

No. The matching contribution must be in cash. A cash contribution is a stronger signal of the outside investor's interest in the technology, and can be readily verified.

(4) Can a purchase order from an outside investor count as a matching contribution under the Fast Track?

An advance purchase order for new products resulting from the SBIR project can count as a matching contribution under the Fast Track (assuming the other Fast Track conditions are met).

(5) Can the funds raised from an initial public offering (IPO) count as matching funds for purposes of the Fast Track?

Yes, as long as the offering memo indicates that a portion of the funds from the IPO will pay for work (e.g., R&D, marketing, etc.) that is related to the SBIR project.

(6) If large company L pays small company S for work related to S's SBIR project and expects a deliverable (goods or services) from S in return, would that qualify as an "investment"?

No, for the same reason a loan does not count. Specifically, in this situation the large company is not betting on the small company's success in bringing the technology to market, but merely on its ability to provide the deliverable.

C. Examples Re: Timing/Logistics of the Fast Track Investment

(1) Can entity E's investment in small company S during the first month of S's phase I SBIR project count as a matching contribution to qualify S for the Fast Track?

Yes, provided that E is an outside investor and that the other Fast Track conditions are met. The investment can occur any time after the start of the phase I project.

(2) Small company A, which has won a phase I award, spins off small company B to commercialize the SBIR technology. A then convinces angel investor I to invest funds in B. Can I's investment in B count as a matching contribution to qualify A for the Fast Track?

For I's investment in B to qualify A for the Fast Track, DoD must determine that A and B are substantially the same entity, as evidenced, for example, by their meeting the definition of "affiliates" in 13 C.F.R. Sec.121.103. If DoD determines that A and B are substantially the same entity, I's investment in B could qualify A for the Fast Track. Of course, the parties must also meet the other conditions for the Fast Track (e.g., I must be an outside investor).

(3) Small company S is collaborating with a university on an STTR project. Investor I wishes to provide funds to the university in order to qualify S for the STTR Fast Track. Can I's investment in the university count as a matching contribution to qualify S for the Fast Track?

In order to qualify S for the STTR Fast Track, I's investment of funds must be in small company S, not in the university. S can then subcontract some of the funds to the university. The rationale is that a cash investment in the small company is a very strong indication of commercial potential, whereas an investment in the university is less so.

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IRS	IIT Research Institute	Tax Systems Modernization Institute 4600 Forbes Blvd., 2nd Floor Lanham, MD 20706 Dr. Don Milton (301) 731-8894

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